



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-A-U-S- [REDACTED]

DATE: FEB. 22, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a school district, seeks to employ the Beneficiary as an SAP functional analyst. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center initially approved the petition, but subsequently revoked approval of the petition after concluding that the Petitioner had not established that the Beneficiary possessed the minimum experience required on the labor certification for the proffered position.¹ The Director also invalidated the labor certification. The Petitioner filed a motion to reopen and reconsider, and the Director determined that approval of the petition should remain revoked.

On appeal, the Petitioner submits a brief and additional evidence. The Petitioner asserts that the evidentiary issues cited by the Director have been resolved, that the evidence establishes the Beneficiary's qualifying experience, and that it refutes the Director's willful misrepresentation finding and invalidation of the labor certification. The Petitioner requests that we reinstate the validity of the labor certification and the approval of the petition.

Upon *de novo* review, we will sustain the appeal.

The Director revoked the petition's approval after concluding that the record did not establish the Beneficiary has the 60 months of experience required by the terms of the labor certification. Specifically, the Director found that only experience gained after the Beneficiary was awarded his formal baccalaureate degree certificate could be considered qualifying. The Director also declined to accept experience that the Beneficiary gained with one former employer.

¹ Section 205 of the Act, 8 U.S.C. § 1155, provides that the Secretary of Homeland Security may "for good and sufficient cause, revoke the approval of any petition." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

On appeal, the Petitioner maintains that the Beneficiary accrued the requisite post-degree experience if we recognize that his degree was conferred on the earlier date of his provisional certificate rather than from the date his formal degree was issued. We may consider the provisional certificate to constitute the official academic record of the beneficiary's "degree" for purposes of calculating the five-year period of post-graduate experience, if a petitioner establishes that all of the substantive requirements for the degree were met and that the degree was in fact approved by the responsible university body at the time a provisional certificate was issued. *Matter of O-A-, Inc.*, Adopted Decision 2017-03 (AAO Apr. 17, 2017). Here, the record demonstrates that by issuance of the provisional certificate the Beneficiary had completed all substantive requirements of his degree and the university had in fact approved the degree. As such, we will consider experience gained after the date the provisional certificate was awarded as post-baccalaureate experience.

Regarding the Director's concern with the Beneficiary's experience with one prior employer, we find that the record, including additional documentary evidence submitted on appeal, establishes that the Beneficiary, more likely than not, has the claimed experience. Considering this experience as qualifying experience, in conjunction with calculating the Beneficiary's experience from the date of his provisional certificate, we find that the record demonstrates the Beneficiary's possession of the 60 months of qualifying post-baccalaureate experience required by the labor certification.

We also find that the Director's finding of "fraud and/or material misrepresentation" and invalidation of the labor certification is not supported by the record. In this case the Director stated in the revocation decision that he found fraud "and/or" willful misrepresentation of a material fact. However, he did not specify whether he found fraud or whether he found willful misrepresentation of a material fact or both, whether the finding applied to the petition, the labor certification, or both, and whether it applied to the Petitioner, the Beneficiary, or both. After reviewing and discussing evidence submitted in this proceeding with respect to the Beneficiary's employment history, we do not find that they rise to the level of fraud or willful misrepresentation of any material fact in these proceedings, and moreover, the Petitioner has overcome the noted inconsistencies on appeal. Accordingly, we will withdraw the Director's finding that the labor certification must be invalidated based on "fraud and/or material misrepresentation."

The Petitioner has established by a preponderance of the evidence that the Beneficiary has the requisite experience to qualify for the job opportunity under the terms of the labor certification. Therefore, we will sustain the appeal. We will also withdraw the Director's finding of fraud and/or willful misrepresentation of a material fact and reinstate the validity of the labor certification.

ORDER: The appeal is sustained.

FURTHER ORDER: The ETA Form 9089, case number [REDACTED] is reinstated.

Cite as *Matter of L-A-U-S-* [REDACTED] ID# 550782 (AAO Feb. 22, 2018)